

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED

JAN 0 2019

Clerk, U S District Court
District Of Montana
Missoula

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

vs.

VICTOR FOURSTAR, JR.,

Defendant/Movant.

Cause No. CR 02-52-GF-DLC
CV 19-91-GF-DLC

ORDER DISMISSING § 2255
MOTION AND DENYING
CERTIFICATE OF
APPEALABILITY

On December 27, 2019, Defendant Fourstar filed a motion to vacate, set aside, or correct the sentence under 28 U.S.C. § 2255 (Doc. 324). He challenges the revocation of his supervised release on August 22, 2019, arguing that he received ineffective assistance of counsel. *See* Mot. § 2255 (Doc. 324) at 4–5. An appeal of the revocation is pending. *See United States v. Fourstar*, No. 19-30200 (9th Cir. filed Aug. 29, 2019).

A § 2255 motion is the equivalent of a petition for writ of habeas corpus. *See, e.g., United States v. Hayman*, 342 U.S. 205, 210–19 (1952). “Habeas review is an extraordinary remedy and will not be allowed to do service for an appeal.” *Bousley v. United States*, 523 U.S. 614, 621 (1998) (quoting *Reed v. Farley*, 512 U.S. 339, 354 (1994), and *Sunal v. Large*, 332 U.S. 174, 178 (1947)). For that reason, district courts do not consider § 2255 motions before the challenged


judgment is final, *see, e.g., Feldman v. Henman*, 815 F.2d 1318, 1320 (9th Cir. 1987) (as amended); *United States v. Deeb*, 944 F.2d 545, 548 (9th Cir. 1991); Rule 5, Rules Governing § 2255 Proceedings for the United States District Courts, advisory committee's note (quoting *Womack v. United States*, 395 F.2d 630, 631 (D.C. Cir. 1968)), including a ruling on any petition for writ of *certiorari* to the United States Supreme Court, *see Griffith v. Kentucky*, 479 U.S. 314, 321 n.6 (1987).

This law is well-settled. A certificate of appealability is not warranted. *Gonzalez v. Thaler*, 565 U.S. 134, 140–41 (2012) (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS ORDERED:

1. Fourstar's motion under 28 U.S.C. § 2255 (Doc. 324) is DISMISSED.
2. A certificate of appealability is DENIED. The Clerk of Court shall immediately process the appeal if Fourstar files a Notice of Appeal.
3. The Clerk of Court shall ensure that all pending motions in this case and in CV 19-91-GF-DLC re terminated and shall close the civil file by entering judgment of dismissal.

DATED this 6th day of January, 2020.



Dana L. Christensen, Chief Judge
United States District Court